

### **REMARKS**

After entry of this amendment, claims 1-9 and 11-19 are pending, of which claim 11 is withdrawn. Claims 13-19 have been added and find support *inter alia* in the original claims. Claim 13 finds further support in the specification at page 16, lines 24-30, and page 17, lines 6-9. Claims 14-19 find further support in the specification at page 14, lines 4-9. The claims have been amended without prejudice and disclaimer to delete the non-elected subject matter and to better comply with the U.S. practice. The amended claims find support *inter alia* in the original claims. Claims 5 and 8 find further support in the specification at page 1, lines 5-7. No new matter has been added.

### **Objection To The Specification**

The Examiner objects to the abstract for containing legalese. A replacement abstract is enclosed deleting the legalese. No new matter has been added. Reconsideration and withdrawal of the objections to the specification are respectfully requested.

### **Objection To The Claims**

The Examiner objects to claims 2, 5, 6, 8, and 12 for containing non-elected sequences. Claims 2, 5, 6, 8, and 12 have been cancelled without prejudice or disclaimer. Accordingly, the objection is believed to be rendered moot. Withdrawal of the objection is respectfully requested.

### **Rejections under 35 U.S.C. § 102(b)/103(a)**

Claims 1-9 and 12 were rejected as being anticipated under U.S.C. § 102(b) and/or 35 U.S.C. § 103(a) by Lassner *et al.* (WO 2000/18889, hereinafter "Lassner") which discloses, *inter alia*, EMBL Genbank Accession No. BD224848 as SEQ ID NO: 217, 225. Applicants respectfully disagree and traverse both the anticipation and obviousness rejections for the following reasons.

"[T]o hold that a prior art reference anticipates a claim, the Board must expressly find that every limitation in the claim was identically shown in the single reference." *Gechter v. Davidson*, 116 F.3d 1454, 1460 (Fed. Cir. 1997).

The Examiner alleges that Lassner teaches a method of increasing the total oil content in a plant organism or a tissue, organ, part, cell or propagation material thereof as claimed in the

present application. The Examiner further contends that Lassner discloses the expression cassette and the transgenic plants as claimed in the present application. Applicants respectfully disagree. However, to expedite the prosecution, the claims have been amended without prejudice or disclaimer, and reconsideration is respectfully requested.

Lassner discloses the isolation of nucleic acid sequences encoding acyltransferase-related proteins from plants, one of which is SEQ ID NO: 225, which is a species of the nucleic acid encoding an oil synthesis enhancing protein as recited in the present claims. Lassner predicts that these acyltransferase-related proteins would be active in the transfer of a fatty acid group from a fatty acid donor to a fatty acid acceptor, and may be useful in producing transgenic host cells that are capable of producing modified lipid content and compositions. See Lassner, Abstract. While it is disclosed that the nucleic acids can be expressed in oil-producing plants (Lassner, page 14, lines 20-30), there is no disclosure that expression of any sequence, including SEQ ID NO: 225, would cause an increase in oil content in any plant or organism. That includes Example 8, noted by the Examiner, which likewise fails to disclose an increase in oil content.

Moreover, Lassner does not disclose experimental data to support the hypothetical acyltransferase activity of the disclosed nucleic acid sequences.

In contrast to Lassner's disclosure, the claimed method recites a step of selecting the transgenic plant organism or a tissue, organ, part, cell or propagation material thereof based on the increased oil content. Since Lassner does not disclose that transgenic expression would cause an increase in oil content, there is necessarily no disclosure of the claimed selection step. For this reason, Applicants traverse the Examiner's finding that Lassner teaches a method of increasing the total oil content in a plant organism or a tissue, organ, part, cell or propagation material thereof as claimed in the present application.

As to the alleged obviousness of the claimed method, one skilled in the art would not have been motivated to produce transgenic plant organism or a tissue, organ, part, cell or propagation material thereof, and to select those transgenic plant organism or a tissue, organ, part, cell or propagation material thereof for increased oil content, since the prior art provides no expectation that the transgenic plant organism or a tissue, organ, part, cell or propagation material thereof would have increased oil content. Thus, the method as claimed would not have been obvious.

Similarly, the claimed expression cassette and the claimed genetically modified plant organism or tissue, organ, part, cell or propagation material thereof, as defined in the amended claims, require increased oil content, which again is not taught or suggested in Lassner.

Reconsideration and withdrawal of the rejections is respectfully requested.


### **CONCLUSION**

For at least the above reasons, Applicants respectfully request withdrawal of the rejections and allowance of the claims.

Applicants reserve all rights to pursue the non-elected claims and subject matter in one or more divisional applications,

Accompanying this response is a petition for a two-month extension of time to and including December 26, 2007 to respond to the Office Action mailed July 26, 2007 with the required fee authorization. No further fee is believed due. However, if any additional fee is due, the Director is hereby authorized to charge our Deposit Account No. 03-2775, under Order No. 12810-00153-US from which the undersigned is authorized to draw.

Respectfully submitted,

By   
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